MBF HOLDINGS BHD. v. EMTEX CORPORATION BHD.

[S.C. (Wan Suleiman, Seah & Mohamed Azmi S.C. JJ.) June 27, July 1 & November 28, 1985]

[Kuala Lumpur – Supreme Court Civil Appeal No. 213 of 1985]

Companies – Takeover offer – Whether approval of Capital Issues Committee must be obtained before issuing notice of takeover – Application for injunction – Whether company has locus standi – Securities Industry Act, 1983, s. 6 – Companies Act, 1965, 179(2)(a).

Securities Industry – Company takeover – Notice – Approval of C.I.C. – Securities Industry Act, 1983, s.6.

Statutes – Interpretation.

In this case the respondents had received from the Arab-Malaysian Merchant Bank Berhad on behalf of the appellants a notice of a takeover scheme under section 179 Companies Act, 1965. The respondents contended that the notice was bad in law on the ground that the appellants had not obtained the approval of the Capital Issues Committee (CIC) as required by section 6 of the Securities Industry Act, 1983. The respondents therefore contending that they had a duty to protect the interests of the company and its shareholders against an unlawful act, brought an action against the appellants for a declaration that a public company which intended to make a takeover offer within the meaning of section 179 should first obtain the approval of the CIC before issuing a notice of takeover to the offeree company. It also sought *inter alia* for an injunction that the appellants refrain from taking any further steps in the takeover scheme as required by section 179 of the Companies Act and in particular from despatching to Emtex shareholders the offer documents. V.C. George J. held that the respondents had *locus standi* to initiate the suit and that CIC approval of the proposal for the takeover scheme was a condition precedent to any step being taken under section 179 of the Companies Act, 1965. He granted the interlocutory injunction as prayed. The appellant appealed.

Held, by a majority (Seah S.C.J. dissenting): (1) in addition to the requirements of section 179 Companies Act, for any takeover scheme, section 6 of the Securities Industry Act, 1983, makes it mandatory for a Malaysian incorporated company to submit to the CIC a proposal, that is, the proposed takeover scheme, for approval. The existence of an approved takeover scheme must precede the making of a takeover offer by the offeror corporation;

(2) there is no substance in the argument that the offeree corporation could have no interest in the matter merely because the takeover scheme was only intended for the shareholders. When the proposed offer was bad in law it must surely affect the interest of EMTEX directors in ensuring that the company would not be taken over illegally. They had therefore a sufficient or real interest in the suit.

Cases referred to:

(1) *Colortone Holdings Ltd.* v. *Calsil Ltd.* [1965] V.R. 129.

(2) *Tan Sri Haji Othman Saat* v. *Mohamed bin Ismail* [1982] 2 M.L.J. 177.

(3) *Aberfoyle Plantations Ltd.* v. *Khaw Bian Cheng* [1960] M.L.J. 47.

(4) *National Assistance Board* v. *Wilkinson* [1952] 2 Q.B. 648, 661.

(5) *George Wimpey & Co. Ltd.* v. *B.O.A.C.* [1954] 3 All E.R. 661, 662.

(6) *Duport Steels Ltd.* v. *Sirs* [1980] 1 W.L.R. 142.

(7) *Stowel* v. *Lord Zouch* (1797) 1 Plowden 353; 369; 75 E.R. 536, 560.

(8) *Sussex Peerage Case* (1844) 8 E.R. 1034, 1057.

(9) *Fothergill* v. *Monarch Airlines* [1980] 3 W.L.R. 209, 221.

(10) *Grundt* v. *Great Boulder Proprietary Gold Mines* [1948] Ch. 145, 159.

(11) *Dovey* v. *Cory* [1901] A.C. 477, 488.

(12) *Carruth* v. *Imperial Chemical Industries* [1937] A.C. 707, 769.

(13) *Magor & St. Mellons R.D.C.* v. *Newport Corporation* [1952] A.C. 189.

London Transport Executive v. *Betts* [1959] A.C. 213, 247.

(15) *Crawford* v. *Spooner* (1846) 6 Moore P.C. 1, 9.

(16) *R.* v. *Mansel Jones* (1889) 23 Q.B.D. 29, 32.

(17) *Young & Co.* v. *Leamington Spa Corporation* (1883) 8 App. Cas. 517, 526.

(18) *National Assistance Board* v. *Wilkinson* [1952] 2 All E.R. 255.

(19) *Mixnams Properties Ltd.* v. *Chertsey U.D.C.* [1965] A.C. 735, 751.

(20) *Saloman* v. *Saloman & Co.* [1897] A.C. 22, 29.

(21) *Attorney-General* v. *Great Eastern Railway Co.* (1879-80) 5 App. Cas. 473, 479.

(22) *Evans* v. *Bartlam* [1937] A.C. 473, 481.

(23) *Ooi Boon Leong & Ors.* v. *Citibank N.A.* [1984] 1 M.L.J. 222, 226.

(24) *Pemungut Hasil Tanah, Pulau Pinang* v. *Ong Gaik Kee* [1983] 2 M.L.J. 35.

(25) *King-Emperor* v. *Bensari Lal Sarma* (1945) 72 I.A. 57, 70.

(26) *Garland* v. *Carlisle* (1837) 7 E.R. 263, 268.

(27) *Midland Silicones Ltd.* v. *Scruttons Ltd.* [1960] 3 W.L.R. 372.

(28) *Ashbury Carriage Co.* v. *Riche* (1875) L.R. 7 H.L. 653, 671.

HIGH COURT.

R.A. Lazar (*Michael Lim* with him) for the plaintiff/applicant.

Raja Abdul Aziz Addruse (*Mohamed Ismail Shariff, Porres P. Royan* and *W. Durai* with him) for the defendant.

Cur. Adv. Vult.

V.C. George J. (on enclosure (3)): Section 6 of the Securities Industry Act 1983 makes it incumbent on all public limited companies incorporated in Malaysia (unless specifically exempted from doing so) to submit proposals for any takeover scheme (within the meaning of section 179 of the Com-

panies Act 1965) to and for the approval of the Capital Issues Committee (CIC). On May 17, 1985 MBF Holdings Bhd. (MBF) submitted such a proposal to the CIC for the takeover of another public company, Emtex Corporation Bhd. (Emtex).

Section 179 of the Companies Act regulates takeover schemes. That section provides, *inter alia*, that a takeover offer shall not be made unless the offeror corporation has, not earlier than 28 days and not later than 14 days, before the offer is made to the shareholders of the offeree corporation given or caused to be given notice in writing of the takeover scheme (in terms prescribed by the section) to the offeree corporation.

On May 29, 1985 Emtex received what was purported to be a section 179 notice issued at the instance of MBF. Later on June 1, 1985 an amended version of the notice was also received by Emtex which amended version was regarded by both parties as the relevant section 179 notice. The notice disclosed that a general offer was to be made to acquire all the shares in Emtex on the basis of six "new" fully paid up shares of 50 cents each of MBF for every five fully paid up Emtex shares of $1 each. The notice also disclosed that the offer to be made to each of the shareholders of Emtex would be a conditional offer *viz*:

"CONDITIONS OF THE OFFER

2(a) The offer is conditional upon the following:

(i) the passing of the necessary resolution(s) by the shareholders of MBF to approve the offer;

(ii) consents to the offer being obtained from the Foreign Investment Committee and the Capital Issues Committee in Malaysia and all other necessary consents or approvals in relation to the offer being obtained in a form satisfactory to MBF;

(iii) the listing and quotation of the new MBF ordinary shares to be issued pursuant to the Offer being granted in principle by The Kuala Lumpur Stock Exchange ("The KLSE"); and

(iv) no government, governmental, regulatory body enacting any statute or regulation which would in the opinion of MBF prohibit, materially restrict or materially delay the making of the offer, or its implementation.

(b) The offer is not conditional upon the following:

(i) The offer is not conditional upon acceptances being received in respect of a minimum number of the offer shares.

(ii) The offer is not conditional upon shareholders of Emtex approving or consenting to any payment or other benefit being made or given to any director of Emtex or any corporations which is deemed by virtue of section 6 to be related to Emtex as compensation for loss of office or as consideration for, or in connection with, his retirement from office."

When the section 179 notice was received by Emtex, CIC approval of the proposed takeover scheme had not been obtained for or on behalf of MBF.

On June 7, 1985 Emtex caused the instant writ to issue against MBF, *inter alia*, for a declaration that CIC approval had to be obtained in respect of the proposed takeover scheme before a valid section 179 notice could be sent and that (in any event) any offer subject to those conditions is "void for the purposes of section 179 of the Companies Act".

On the same day June 7, 1985 the plaintiffs caused an *ex parte* summons in chambers (enclosure (3)) to issue seeking an injunction restraining the defendant from making the offer (in respect of which the section 179 notice had been given). When the application came before me on June 8, 1985 I directed that it be heard *inter partes* on June 13, 1985. It was and the hearing went on for a few days and on June 22, 1985 I held that on a true construction of section 6 of the Securities Industry Act an offeror cannot embark on a valid takeover exercise without the prior approval of the CIC. The injunction sought by prayer 1 of the summons was granted.

Encik Mohamed Ismail of counsel for the defendant had taken a preliminary point – he questioned the *locus standi* of Emtex to bring the action. His contention was that the offers to be made were to the shareholders of Emtex and not to Emtex. He complained that Emtex was interfering with the rights of the shareholders who were not before the Court some of whom it was suggested could be interested in accepting the offer to be made by MBF. *Colortone Holdings Ltd.* v. *Calsil Ltd.*[1] was cited and the passage from line 15 at page 138 was read.

In *Tan Sri Haji Othman Saat* v. *Mohamed bin Ismail*[2] the Federal Court discussed the issue of the entitlement of a plaintiff to bring a declaratory action and seek an injunction. The judgment stated at page 178 of the report:

"On a general consideration of the authorities it would seem that the plaintiff in proceedings for a declaration need do no more than establish that he has a 'real interest' in the suit."

And at page 179 is this passage:

"It might not perhaps be inappropriate to make some

observations on the *locus standi* rule in relation to injunctions and declarations. We refer to *Lim Cho Hock* v. *Government of the State of Perak & 2 Ors.* and accept and approve the discussion in the judgment in that case (at pages 149-151) on the question of *locus standi* and and endorse the concept of liberalizing the scope of individual standing.

...

The sensible approach in the matter of *locus standi* in injunctions and declarations would be that as a matter of jurisdiction, an assertion of an infringement of a contractual or a proprietary right, the commission of a tort, a statutory right or the breach of a statute which affects the plaintiff's interests substantially or where the plaintiff has some genuine interest in having his legal position declared, even though he could get no other relief, should suffice..."

By section 179 of the Companies Act, Emtex the offeree corporation is required to issue a statement in terms of Part C of the Tenth Schedule to the Act which could include the recommendations of the directors of Emtex on the takeover scheme. In my view, this alone demonstrated that if Emtex was reasonably dubious about the procedures adopted to effect the takeover it had a genuine interest in having the (and its) legal position declared. Apart from that and in any event I was and am of the view that the takeover of a corporation does affect the corporation to such an extent as to give it the required *locus standi* to seek the opinion of the Court on the validity of the purported takeover exercise. I ruled in favour of the plaintiff.

In respect of the contentions made on behalf of the plaintiff, I found no merit in the argument that the offer to be made pursuant to section 179 of the Companies Act should not result in a conditional contract. Encik Robert Lazar for the plaintiff was particularly concerned about conditions 2(a)(i) and 2(a)(ii) which have been reproduced hereabove.

The general law of contract allows parties to enter into contracts containing one or more conditions precedent. See *Aberfoyle Plantations Ltd.* v. *Khaw Bian Cheng.*[3] Now, "[i]t is a well-established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion," (*National Assistance Board* v. *Wilkinson*[4]). Also, "... where the language of a statute is not calculated to deal with a situation to which it has to be applied and the arguments are fairly evenly balanced, that interpretation should be chosen which involves the least alteration of the existing law; ..." (*George Wimpey & Co. Ltd.* v. *B.O.A.C.*[5]).

I could not see in section 179 any express or even implied provisions prohibiting the parties concerned from entering into a contract containing conditions precedent.

Raja Abdul Aziz Addruse also for the defendant drew attention to the fact that a reading of the Tenth Schedule to the Act in fact suggests that conditions precedent may be imposed by the offeror corporation. See Tenth Schedule Part A paragraphs 2 and 3. Paragraph 2 is of course an example of a clear prohibition of the type that *National Assistance Board* v. *Wilkinson* was talking about. Whether the conditions imposed are fair is quite another question and in respect of which, certainly at this stage of these proceedings, I see no call for the Court to express any opinion.

What then was left was the other contention for the plaintiff that section 6 of the Securities Industry Act called for an offeror corporation to obtain CIC approval for a takeover scheme before sending or causing to be sent the section 179 notice.

Prior to the introduction of section 179 of the Companies Act in respect of a takeover of a corporation, the offeror could and sometimes did communicate with the corporation to be taken over and thereupon the directors of that corporation could advise the shareholders of what they thought of the offer. It was, however, a legitimate practice for an offeror to make its offers direct to the shareholders. What section 179 did was to make it obligatory to follow the former practice of the offeror communicating with the company to be taken over rather than with the shareholders. The section also imposes a duty on the company receiving notice of an offer to provide certain prescribed information to its shareholders. I share the view of the Australian judge in *Colortone Holdings Ltd.* v. *Calsil Ltd.* on the reasons for the introduction of their section 184 and I too hold that our section 179 was enacted similarly to protect shareholders from becoming vulnerable to takeover bidders and having their rights coaxed away from them upon inadequate information and advice. Under the provision of section 179 some measure of protection is given to all shareholders as a class by imposing duties on the offeror and offeree companies. Section 179 causes a slowing down of the process of a takeover so that shareholders are not taken by surprise and may obtain advice from an adverse party to the offeror and that advice will come from persons who have an intimate knowledge of the company to be taken

over, namely, members of its board of directors.

However, it would seem that in Malaysia Parliament was not satisfied that the mischief that section 179 was to remedy was in fact effectively being so remedied. This led to the enactment in 1983 of section 6 of the Securities Industry Act in the terms that it was enacted. Clearly it was the intention of Parliament that in spite of themselves the shareholders of a company that was to be taken over had to be protected. The Capital Issues Committee (CIC) which was created to advise the Minister and the Registrar of Companies on matters relating to the securities industry was given, *inter alia,* the additional task of deciding whether a takeover of a company should be allowed in deciding which, by section 6(2)(b), the CIC has to consider the viability of the company, the quality and capability of its management and the interest of the public. It seems to me that in as much as that the implementation of the provisions of section 179 provided the shareholders with *inter alia* the advice of the board of management of the company on the proposed takeover, section 6 provided the shareholder the further benefit of having the stamp of approval of the CIC on the takeover. For that to be meaningful the shareholder should obtain the benefit of the view of the CIC before he exercises the option to accept or reject the offer. For it to be meaningful the stamp of approval of the CIC has to be given to the proposal rather than the actual takeover. Further it has to be noted that the CIC is required to decide whether the proposed takeover should be allowed in the public interest. Proposed takeovers can cause fluctuations in the market, can result in an upsetting of the fine balance that can exist in equity holdings which become relevant *vis-a-vis* the National Economic Policy and so on. This too leads to the view that on a true construction of section 6 an offeror is not to embark on a takeover exercise of a company without the prior approval of the CIC. The offeror has to obtain CIC approval even prior to sending off the section 179 notice to the offeree company. To proceed with the takeover exercise without such approval having been obtained will be a breach of the requirements of section 6 and as such will be restrained by injunction. In a proper case as where the defendant is plainly acting in breach of statute, the Court will on motion or summons grant an interlocutory injunction even though to do so would be to grant the plaintiff substantially all or even the whole remedy or relief claimed in the action. (*The Supreme Court Practice* 1979 Vol. I para 29/1/11D.)

The injunction sought by enclosure 3 was granted.

[The defendant appealed to the Supreme Court.]

SUPREME COURT.

Mohamed Ismail Shariff (*Porres P. Royan* and *A. W. Durai* with him) for the appellants.

Cecil Abraham (*Wilfred Abraham* and *Michael Lim* with him) for the respondents.

Cur. Adv. Vult.

Mohamed Azmi S.C.J. (delivering the majority Judgment of the Court): We have dismissed this appeal by a majority and we now give our reasons.

On June 1, 1985 Emtex Corporation Berhad (the offeree Corporation) received from Arab-Malaysian Merchant Bank Berhad on behalf of BF Holdings Berhad (the offeror Corporation) a notice of a takeover scheme under section 179 Companies Act 1965. Section 179(2)(a) provides:

> "A take-over offer shall not be made unless the offeror corporation has, not earlier than twenty-eight days, and not later than fourteen days, before the offer is made, given or caused to be given to the offeree corporation notice in writing of the take-over scheme containing particulars of the terms of the take-over offers to be made under the scheme, together with a statement that complies with requirements set out in Part B of the Tenth Schedule."

It was the contention of Emtex that the notice was bad in law on the ground that MBF had not first obtained the approval of the Capital Issues Committee ("CIC" for short) as required by section 6, Securities Industry Act, 1983 which came into force on July 7, 1983. In the event Emtex, contending that they had a duty to protect the interests of the company and its shareholders against an unlawful act, brought a suit against MBF in the High Court for a declaration that a public company which intended to make a "take-over offer" within the meaning of section 179 should first obtain the approval of the CIC before issuing a notice of takeover to the offeree company. It also sought, *inter alia,* for an injunction that MBF refrain from taking any further steps in the takeover scheme as required by section 179 of the Companies Act, and in particular from despatching to Emtex shareholders the offer documents. The application for injunction was heard by V.C. George J., and before him the outcome of the application was treated by all concerned as final proceedings which would effectively decide

the fate of the takeover bid by MBF. Two principal issues were canvassed before the learned Judge. First, whether Emtex had *locus standi* to initiate the suit, and second whether CIC approval of MBF proposal for the takeover scheme was a condition precedent to any step being taken under section 179 of Companies Act, 1965. On both issues the learned Judge found for Emtex and the interlocutory injunction as prayed was granted; hence the appeal to this Court.

We would first deal with the decision of the learned Judge that the approval of CIC pursuant to section 6 Securities Industry Act should first be obtained before an offeror could embark on a takeover exercise. Under section 179, Companies Act, a takeover exercise is triggered by the offeror giving a written notice of the takeover scheme to the offeree corporation. This is followed by the offeror making a takeover offer to the shareholders of the offeree corporation which must be made not earlier than 14 days and not later than 28 days from the date of service of the written notice on the offeree corporation. Does section 6 require such prior approval to be obtained? The relevant parts of section 6 on takeover scheme provide:

"(1) ... the Capital Issues Committee shall examine and approve *the proposals* specified in and in accordance with subsection (2).

(2) (a)(i) *Proposals shall be submitted to the Capital Issues Committee* by all public limited companies incorporated in Malaysia ... *for any* (A) ... (B) ... (C) ... (D) schemes of arrangements, schemes of reconstruction, *takeover schemes,* share option schemes and acquisitions of assets by way of issues of securities; and (E) ...

(b) The Capital Issues Committee shall examine such *proposals* and, after having regard to –

(i) the viability of the company;

(ii) the quality and capability of the management of the company;

(iii) the suitability for listing of the company in a stock exchange where applicable; and

(iv) the interest of the public,

it may approve *the proposals* upon such terms and conditions as it deems fit.

(3) Any public limited company which has submitted *proposals* for the purposes of subsection (2) and is aggrieved by the decision of the Capital Issues Committee may within one month from the date of receipt of the decision, appeal to the Minister whose decision shall be final."

(the emphasis is ours.)

There was no dispute in this case that approval of CIC must be obtained for the successful implementation of the takeover of Emtex by MBF and as such it was not seriously in question that in any takeover exercise by companies incorporated in Malaysia both the provisions of the Companies Act 1965 and the Securities Industry Act 1983 would apply. Indeed, MBF had in fact submitted their proposal to the CIC on May 17, 1985 but without waiting for CIC approval, MBF had served a notice of the takeover scheme on Emtex on June 1, 1985, and but for the injunction MBF would, in the normal course of event, have made the takeover offer to EMTEX shareholders by June 28, 1985 as required by section 179(2)(a). The conflict was therefore limited to when such approval must be obtained. The crux of the MBF argument both here and in the Court below was that CIC approval could be obtained at any time because the legislature did not make any express provision regarding time. For the purpose of the injunction and in the context of this appeal, the question was whether MBF could proceed with making a takeover offer under section 179(2)(b) without waiting for the approval of the CIC? The word "proposal" is not defined in both the Acts, but Encik Abraham for Emtex had suggested that the meaning of the word as defined in section 2 of the Contracts Act, 1950 should apply. If so, then a "proposal" in the context of a takeover exercise under the two legislation would be a "proposed takeover offer" intended to be given by the offeror corporation. On the other hand, Encik Ismail for MBF had conceded that the word "proposal" had a wider meaning than the word "offer". We agree with Encik Ismail's concession, and we think there is a clear distinction between the two words. In our view, the plain and ordinary dictionary meaning of the word should be applied. "Proposal" is defined by the *Shorter Oxford Dictionary* to mean, *inter alia,* "the action or an act of putting before the mind"; "a scheme or plan proposed". A "proposal" is therefore a proposed scheme or plan, and in terms of a takeover scheme under section 6(2) of the 1983 Act, a "proposal" means a "proposed takeover scheme" which by necessity must, *inter alia,* contain a "proposed takeover offer". Further, the term "takeover offer" is defined by section 179 Companies Act to mean, "an offer or proposed offer for the acquisition of shares under a takeover scheme"; whilst the term "takeover scheme" is defined as a scheme involving the making of offers for the acquisition by or on behalf of a corporation or on behalf of a proposed corporation of certain number of shares or class of shares in another corporation. From the statutory definitions there can be no doubt that a takeover scheme

must, *inter alia,* contain a proposed takeover offer. We are therefore of the view that the "proposal" to be submitted for CIC approval under section 6 of the 1983 Act is a proposed takeover scheme containing the details of the scheme including the proposed takeover offer under the said scheme. It should also be observed that under sections 5 and 6 of the 1983 Act, apart from advising the Registrar of Companies, the main function of the CIC is to examine and approve proposals required to be submitted by companies incorporated in Malaysia (unless the company falls within an exception made by order of the Minister of Finance) not only for any takeover scheme but also for any (a) new issues or offers for sale of securities to the public whether such issues or offer are by way of public issue or by private placements; (b) rights issues of securities; (c) bonus issues of securities otherwise than by way of the capitalisation of unappropriated profits; (d) schemes of arrangements or reconstruction, share option schemes and acquisitions of assets by way of issues of securities; and (e) listing and quotation of securities; on a stock exchange. These functions are consistent with the object of the Act which is to make provisions with respect to stock exchanges, stock brokers and other persons dealing in securities, and for certain offences relating to trading in securities and for other purposes connected therewith. To reiterate, a "proposal" in the context of section 6 is a proposed or intended scheme or plan, and in relation to any takeover scheme, it means the "proposed takeover scheme" which *inter alia* contains a "proposed takeover offer", whether conditional or otherwise just as in the case of new issues or offers for sale of securities to the public, the proposal submitted for CIC approval must contain the proposed new issues or offers of such sale. It is this "proposal" which must be submitted and examined by the CIC before giving its approval upon such terms and conditions as it deems fit having taken into account the four factors referred to in section 6(2)(b). For any takeover scheme, and indeed for any of the dealings on securities as enumerated in section 6(2)(a)(i), since the law requires the proposal to be approved by the CIC, it must surely precede the actual motion of takeover referred to in section 179 Companies Act. Since the proposed takeover offer contained in the proposal is part and parcel of the subject matter which requires approval, it would be superfluous for the legislature to expressly provide that the approval of CIC must precede the making of the offer to the shareholders of the offeree corporation. Just as in the case of a proposal to list and quote securities on a stock exchange, it would be absurd to interprete that the approval of the CIC can be obtained at anytime. Surely no express statutory provision is required for the requirement that the approval must be obtained first before such listing and quotation. Once the proposed takeover scheme has been approved, it is only then that an offer can be made to the shareholders pursuant to section 179(2)(b). It is this approved takeover offer included in the approved proposal which must be offered to the shareholders who would then be in a position to decide for themselves whether to reject or accept the offer after having had the advantage of knowing not only that the entire takeover scheme has been scrutinized by the CIC but also that the takeover offer has been examined by the directors of Emtex themselves who are under a statutory duty to make a written statement under section 179(3) after receipt of a takeover notice from MBF. The learned Judge had effectively set out the mischief that the provisions of section 179 of the Companies Act 1965 and section 6 of the Securities Industry Act 1983, were intended to remedy. Giving both statutory provisions their ordinary and plain meaning, we entirely agreed with his reasoning as contained in the following passage of his judgment:

> "Prior to the introduction of section 179 of the Companies Act in respect of a takeover of a corporation, the offeror could and sometimes did communicate with the corporation to be taken over and thereupon the directors of that corporation could advise the shareholders of what they thought of the offer. It was, however, a legitimate practice for an offeror to make its offers direct to the shareholders. What section 179 did was to make it obligatory to follow the former practice of the offeror communicating with the company to be taken over rather than with the shareholders. The section also imposes a duty on the company receiving notice of an offer, to provide certain prescribed information to its shareholders. I share the view of the Australian judge in *Colortone Holdings Ltd.* v. *Calsil Ltd.* on the reasons for the introduction of their section 184 and I, too, hold that our section 179 was enacted similarly to protect shareholders from becoming vulnerable to takeover bidders and having their rights coaxed away from them upon inadequate information and advice. Under the provision of section 179 some measure of protection is given to all shareholders as a class by imposing duties on the offeror and offeree companies. Section 179 causes a slowing down of the process of a takeover so that shareholders are not taken by surprise and may obtain advice from an adverse party to the offeror and that advice will come from persons who have an intimate knowledge of the company to be taken over, namely, members of its board of directors.
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> However, it would seem that in Malaysia Parliament was not satisfied that the mischief that section 179 was to remedy was in fact effectively being so remedied. This led to the enactment in 1983 of section 6 of the Securities Industry Act in the terms that it was enacted."

Thus, in addition to the requirements of section 179, Companies Act, for any takeover scheme, section 6 of the 1983 Act makes it mandatory for a Malaysian incorporated company to submit to the CIC, a "proposal" *i.e.* the proposed takeover scheme, for approval. The existence of an approved takeover offer as contained in an approved takeover scheme must, as alluded to earlier, precede the making of a takeover offer by the offeror corporation. Any other interpretation would result in absurdity and render meaningless the words used by the legislature in the 1983 Act when read with section 179, Companies Act. It must be emphasised the legislature has chosen to use the word "proposal" for takeover scheme in section 6 as distinct from "takeover offer" as defined and employed in section 179. The double protection given to Emtex shareholders by section 6 of the Securities Industry Act and section 179 of the Companies Act must be complied with before any offer is made to them. As such on the true construction of section 6, CIC approval of the offeror corporation's proposal must first be obtained before any offer can legally be made to Emtex shareholders, and it makes no difference whether the offer is merely conditional as in the present case. The meaning of the word "proposal" in the statute is plain and unambiguous and as such we should not invent fancied ambiguities merely because we ourselves consider that the consequences of giving effect to its plain meaning would be inexpedient or even unjust. Whether the shareholders really need the double protection, and whether CIC prior approval would in fact cause intolerable delay in takeover exercise, are not matters for the Court to judge. In *Duport Steels Ltd.* v. *Sirs*[6] in dealing with the role of the judiciary when construing Acts of Parliament which judges thought would have injurious consequences, Lord Diplock had this to say in the House of Lords at page 157:

> "A statute passed to remedy what is perceived by Parliament to be a defect in the existing law may in actual operation turn out to have injurious consequences that Parliament did not anticipate at the time the statute was passed; if it had it would have made some provision in the Act in order to prevent them. It is at least possible that Parliament when the Acts of 1974 and 1976 were passed did not anticipate that so widespread and crippling use as has in fact occurred would be made of sympathetic withdrawals of labour and of secondary blacking and picketing in support of sectional interests able to exercise "industrial muscle." But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts, and, if so, what are the precise limits that ought to be imposed upon the immunity from liability for torts committed in the course of taking industrial action. These are matters on which there is a wide legislative choice the exercise of which is likely to be influenced by the political complexion of the government and the state of public opinion at the time amending legislation is under consideration. It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the Court before whom the matter comes consider to be injurious to the public interest."

In view of our conclusion on the takeover offer to the shareholders which would effectively decide the fate of MBF takeover bid, there seems to be no necessity for us to deal with the validity of the takeover notice given by MBF to EMTEX on June 1, 1985. Since an offeror could not embark on a takeover exercise before getting the proposal approved, the notice given by MBF must be of no effect and bad in law. What should be noted is that under section 179(2)(a), the written notice must contain particulars of the terms of the takeover offer to be made under the scheme, and in view of the requirement of section 6 of the 1983 Act it would appear that no offeror corporation could possibly give such particulars without first knowing the fate of their proposal in the hands of the CIC. Further, under section 179(2)(a) the offer to the offeree shareholders had to be made not earlier than 14 days and not later than 28 days from the date of service of written notice in the offeree corporation. As such the giving of notice would be an exercise in futility when, as in the present case, the approval of CIC could not be obtained within the time prescribed.

On the issue of *locus standi*, we found no substance in the argument that the offeree corporation could have no interest in the matter merely because the takeover offer was only intended for the shareholders. When the proposed offer was bad in law, it must surely affect the interest of EMTEX directors in ensuring that the company would not be taken over illegally. In our view they had a sufficient or real interest in the suit as envisaged in the case of *Tan Sri Haji Othman Saat* v. *Mohamed bin Ismail.*[2] The learned Judge had dealt with the issue at some length and we entirely agreed with his treatment of the law.

For the above reasons, we were of the view that the learned Judge was correct on his interpretation of section 6 of the Securities Industry Act and the injunction granted should therefore remain. The appeal was accordingly dismissed with costs.

Seah S.C.J. (dissenting): In my opinion, this appeal ought to be allowed and here are my reasons for doing so.

This appeal turned on the true construction of section 6 of the Securities Industry Act 1983 (hereinafter referred to as the Act). The real question in dispute is whether CIC approval of takeover schemes is a condition precedent before the provisions of subsection 2 of section 179 of the Companies Act 1965 can be put into operation. For the purpose of this appeal the appellant are the "offeror corporation" and the respondent the "offeree corporation" and in this appeal they will be referred to simply as the appellant and the respondent respectively.

The rival contentions of the appellant and the respondent fall within a small compass. Learned counsel for the appellant submitted that it is not a condition precedent to have the approval of CIC to the takeover schemes submitted under section 6 of the Act before putting into effect the provisions of section 179(2) of the Companies Act 1965 and that CIC approval may be given after section 179(2) has been implemented. For the respondent it was argued that prior approval by CIC of the takeover schemes is an essential prerequisite before a company can lawfully embark on a takeover exercise pursuant to section 179(2) thereof. The learned judge ruled in favour of the respondent and in his grounds of judgment he said:

"This too leads to the view that on a true construction of section 6 an offeror is not to embark on a takeover exercise of a company without the prior approval of the CIC. The offeror has to obtain CIC approval even prior to sending off the section 179 notice to the offeree company. To proceed with the takeover exercise without such approval having been obtained will be a breach of the requirements of section 6 and as such can and will be restrained by injunction."

Now, the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble which, according to Chief Justice Dyer in *Stowel* v. *Lord Zouch*,[7] is "a key to open the minds of the makers of the Act, and the mischiefs which they intend to redress" *per* Lord Chief Justice Tindal in *Sussex Peerage* case.[8]

Words to the same effect were uttered by Lord Diplock in *Fothergill* v. *Monarch Airlines*[9]:

"The constitutional function performed by courts of justice as interpreters of the written law laid down in Acts of Parliament is often described as ascertaining "the intention of Parliament"; but what this metaphor, though convenient, omits to take into account is that the court, when acting in its interpretative role, as well as when it is engaged in reviewing the legality of administrative action, is doing so as mediator between the state in the exercise of its legislative power and the private citizen for whom the law made by Parliament constitutes a rule binding upon him and enforceable by the executive power of the state. Elementary justice or, to use the concept often cited by the European court, the need for legal certainty demands that the rules by which the citizen is to be bound should be ascertainable by him (or more realistically, by a competent lawyer advising him) by reference to identifiable sources that are publicly accessible. The source to which Parliament must have intended the citizen to refer is the language of the Act itself. These are the words which Parliament has itself approved as accurately expressing its intentions. If the meaning of those words is clear and unambiguous and does not lead to a result that is manifestly absurd or unreasonable, it would be a confidence trick by Parliament and destructive of all legal certainty if the private citizen could not rely upon that meaning but was required to search through all that had happened before and in the course of the legislative process in order to see whether there was anything to be found from which it could be inferred that Parliament's real intention had not been accurately expressed by the actual words that Parliament had adopted to communicate it to those affected by the legislation."

I would now proceed to deal with the rival contentions.

Both learned counsel for the appellant and the respondent have attempted to show the absurdity or non-absurdity of the rival interpretations. In my opinion, the short answer to these contentions is to quote the words of Lord Greene M.R. in the *Brundt* v. *Great Boulder Proprietary Gold Mines*[10]:

"Although the absurdity or the non-absurdity of one conclusion as compared with another may be of assistance and very often is of assistance to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with great care, remembering that judges may be fallible on the question of an absurdity and in any event must not be applied so as to result in twisting language into a meaning which it cannot bear: it is a doctrine which must not be relied upon and must not be used to re-write the language in a way different from that which it was originally framed."

Cohen L.J. was also not satisfied that the Article of Association in question was an absurdity as there might be good reasons of business policy for its adoption. The Lord Justice said at page 155:

"What may appear to one judge as sensible and legitimate may appear to some other judge or to the persons responsible for forming the company as neither sensible nor legitimate. I do not think that on a ground of that kind we are justified in disregarding what seems to me to be the plain meaning of the English language even though in a particular case it does appear to produce an inequitable result."

Dealing with a company case in the House of Lords Lord Macnaghten in *Dovey* v. *Cory*[11] said:

"I do not think it desirable for any tribunal to do that which Parliament has abstained from doing – that is, to formulate precise rules for the guidance or embarrassment of businessmen in the conduct of business affairs. There never has been, and I think there never will be, much difficulty in dealing with any particular case on its own facts and circumstances; and speaking for myself, I rather doubt the wisdom of attempting to do more."

Some thirty-five years later in the case of *Carruth* v. *Imperial Chemical Industries*[12] Lord Maugham observed:

"Eve J. and the Court of Appeal seem to have laid considerable stress on the well-known proposition, laid down in *English, Scottish & Australian Chartered Bank* [1893] 3 Ch. 385 at p. 409 and often followed, that shareholders acting honestly are usually much better judges of what is to their commercial advantage than the Court can be."

Although this observation was made in an appeal involving the confirmation by the court of a reduction of capital, I think the proposition stated therein should apply also to company takeover exercise. These cases seem to establish the general proposition that judges and courts of law should be chary in intervening in commercial activities or transactions unless compelled to do so by statute expressly or necessary implication.

No submission has been put forward by either the appellant or the respondent in this appeal that there is ambiguity or uncertainty in the provision of section 6 of the Act. For myself, after reading the section I can find no ambiguity in the words used therein, both parties appear to agree that the intention of Parliament is plain, *viz.*, that proposals of takeover schemes should be forwarded to CIC for consideration and approval and the only area of disagreement is contained in the rival contentions which I have already mentioned.

In agreeing with the respondent's contention, the learned judge appeared to have added words to section 6 of the Act or read words into it which were not there thereby altering the operative effect of the section. This, in my opinion, he is not entitled to do. It is a well-recognized canon of construction that a court has no power to fill any gaps disclosed in the Act. To do so would be to usurp the function of the legislature. Authority for this proposition is the case of *Magor & St. Mellons R.D.C.* v. *Newport Corporation.*[13] Lord Denning appeared to have accepted the correctness of this view in *London Transport Executive* v. *Betts*[14] in these words:

"The judges have no right to fill in gaps which they suppose to exist in an Act of Parliament, but must leave it to Parliament itself to do so; see *Magor and St. Mellons Rural District Council* v. *Newport Corporation.*[47] No court is entitled to substitute its words of the Act (see *Goodrich* v. *Paisner*)."

And in *Crawford* v. *Spooner*[15] the Privy Council said:

"We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there."

In other words, the language of Acts of Parliament, and more especially of modern Acts must not be extended beyond its natural and proper limits, in order to supply omissions or defects. The Latin phrase *"expressum facit cessare tacitum"* (when there is express mention of certain things, then anything not mentioned is excluded) aptly applies here. Furthermore, the business of the courts is to see what Parliament had said, instead of reading into an Act what ought to have been said (*per* Lord Coleridge C.J. in *R.* v. *Mansel Jones*[16]).

Next, the learned judge seemed to have implied or imported into section 6 of the Act a further condition or limitation which the legislature could easily have supplied but did not do so. The question to be determined is whether this omission was intentional or accidental. To answer this I would touch very briefly on the legislative history of the Securities Industry Act. Apparently, the Securities Industry Act was first promulgated by Parliament in 1973 or thereabout. It was repealed and replaced with amendments by the Securities Industry Act 1983. Section 6 is one of the additions which was not in the 1973 Act. On the other hand, section 179 is incorporated in the Companies Act when it was enacted in 1965. In *Young & Co.* v. *Leamington Spa Corporation*[17] Lord Blackburn said:

"We ought in general in construing an Act of Parliament, to assume that the legislature knows the existing state of the law."

In *National Assistance Board* v. *Wilkinson*[18] Lord Goddard C.J. said:

"It may be presumed that the legislature does not intend to make a substantial alteration in the law beyond what it expressly declares ..."

This passage was cited by Lord Reid in *Mixnams Properties Ltd.* v. *Chertsey U.D.C.*[19]

Applying this to the facts of this case, it is to be presumed that when Parliament inserted section 6 into the 1983 Act, the legislature must be deemed to be aware of the various statutory requirements and the time limit contained in section 179(2) and paragraph 1 of Part A of the Tenth Schedule to the Companies Act 1965 when a company was about to embark on a takeover exercise. Despite this deeming knowledge Parliament did not insert into section 6 of the Act any words or phrases making prior approval by CIC of the takeover schemes to be a condition precedent to the implementation of the provisions of section 179(2) of the Companies Act 1965. Nor did the Minister of Finance deem fit to amend the requirements of the Tenth Schedule under subsection 8 of section 179 of the Companies Act 1965 in order to achieve the objective of the section or making prior approval by CIC of the takeover schemes to be an essential prerequisite before section 179(2) could be put into operation. In my opinion, this omission was not accidental but was obviously by design, intentionally and deliberately omitted. Therefore, in my opinion, there was no justification for the learned judge to engraft into section 6 the further condition or limitation by necessary implication.

In my opinion, if Parliament had intended that prior approval by CIC of the takeover schemes were to be a condition precedent before section 179(2) of the Companies Act 1965 could be put into effect, the legislature could easily have said so either in section 6 of the Act or section 179 of the Companies Act 1965 in clear and express words as in *Sussex Peerage* case *(supra)*. In that case a provision in the Royal Marriages Act 1772 was judicially considered and the material clause reads:

"That no descendant of the body of his late Majesty King George II male or female (other than the issue of Princesses who have married or may hereafter marry into foreign families) shall be capable of contracting matrimony, *without the previous consent of His Majesty, his heirs or successors*, signified under the Great Seal, and declared in Council (which consent, to preserve the memory thereof is hereby directed to be set out in the licence and register of marriage, and to be entered in the books of the Privy Council); and that every marriage, or matrimonial contract of any such descendant, *without such consent first had and obtained*, shall be null and void to all intents and purposes whatsoever" (emphasis added).

Nowhere could one find such words or phrases either in section 6 of the Act or in section 179 or the Tenth Schedule to the Companies Act 1965. In my opinion, in the absence of clear and express words, such a condition or limitation should not be implied or imported into section 6 by the learned judge. Reliance is placed on the observations of Lord Halsbury in *Salomon* case[20] that "The Court has no right to add to the requirements of the statute, nor to take from the requirements thus enacted. The sole guide must be the statute itself". See also the remark of Lord Selborne L.C. in *Attorney-General* v. *Great Eastern Railway Co.*[21]:

"It would be contrary to sound principle to imply such a condition, not expressed in the clause, if the words, as they stand, would be sensible and operative without it: and it appears to me that they are so."

In *Evans* v. *Bartlam*[22] Lord Russell said: "It would be adding a limitation which the legislature does not impose" or rewriting of the section where Parliament had failed to do so. Recently, Lord Brightman in giving the judgment of the Privy Council in the case of *Ooi Boon Leong & Ors.* v. *Citibank N.A.*[23] said:

"If freedom of contract is to be curtailed in relation to a particular subject matter, their Lordships would expect the prohibition to be expressed in the statute, and not left by the legislature to be picked up by the reader as an implication based upon sections dealing with different subject matters."

It was submitted that section 6 of the Act ought to be given a "purposive construction". I think this phrase "purposive construction" was first used by the House of Lords in the case of *Fothergill* v. *Monarch Airlines (supra)*. In that case the House of Lords had to interpret the word "damage" contained in Article 26(2) of the Warsaw Convention, as amended at The Hague in 1955 which was given effect to by The Carriage by Air Act 1961. The headnote reads:

"On March 13, 1975 the plaintiff returned from holiday in Italy in an aircraft of the defendants' airline and on arrival at Luton airport, he found that a suitcase which was part of his luggage was badly torn. He immediately reported

the fact to a representative of the airline. When he arrived home, the plaintiff found that some of his personal effects were missing from the torn suitcase. He notified his own insurers who passed his claim onto the defendants' airline some four weeks later. The defendants accepted liability for the torn suitcase but rejected the plaintiff's claim for the value of the missing articles because he had not complained of that "damage" within seven days as required by article 26(2) of the Convention."

The House of Lords held that in construing article 26(2) a purposive and not a literal construction should be applied; that having regard to the purpose of article 26(2) and to dictionaries, legal textbooks, articles in legal journals and the decisions of foreign courts and the *travaux preparatoires* leading up to the Hague Protocol of 1955, "damage" or "avarie" in article 26(2) included partial loss of the contents of baggage; and that accordingly, a complaint by the plaintiff of such loss had been required within seven days of the date of receipt of the baggage by him.

I would like to make two observations on the *Fothergill* case. In the first place, the House of Lords there was considering the word "damage" used in Article 26(2) of the Warsaw Convention or International Treaty which appears to have been adopted and given the force of law in the United Kingdom by The Carriage by Air Act 1961. Secondly, the House of Lords was considering whether *travaux preparatoires* could be admissible as aids to interpret and resolve the ambiguity of the word "damage". That case is clearly distinguishable from the instant case in that there appears to be no ambiguity or uncertainty in the provisions of section 6 of the Act. For these reasons, I see no justification for adopting a "purposive construction" in interpreting the section.

It is not disputed that section 6 of the 1983 Act does not prescribe the time limit within which the CIC must give its decision but in my opinion, the short answer to this is section 54(2) of the Interpretation Act 1967 which reads:

"Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises."

This sub-section 2 was considered by the Federal Court in the case of *Pemungut Hasil Tanah, Pulau Pinang* v. *Ong Gaik Kee*[24] and at page 38 Salleh Abas C.J. (Malaya) (as he then was) in dealing with a corresponding provision in section 38 of the Interpretation and General Clauses Ordinance 1948 which is in identical terms with the sub-section said:

"What then is the "convenient speed"? In our view it must be "as soon as possible" or "within a reasonable time", and not "as late as possible". Obviously what amounts to "convenient speed" must vary from case to case ... ."

Since section 6 is inserted into the Securities Industry Act 1983 many years after section 179 of the Companies Act 1965 had been enacted and put to operation, the legislature must be deemed to know the existing state of the law. In my opinion, a decision of the CIC should be given within the period prescribed by section 179(2) read with paragraph 1 of Part A of the Tenth Schedule to the Companies Act 1965.

Having demonstrated that section 6 of the Act is clear and unambiguous and that any omission is not accidental but by design, then the section ought to be construed according to what Viscount Simon said in *King-Emperor* v. *Bensari Lal Sarma*[25]:

"Again and again this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used."

Where the language is explicit, its consequences are for Parliament, and not for the courts, to consider. In such a case the suffering citizen must appeal for relief to the law-giver and not to the lawyer (*per* Coleridge J. in *Garland* v. *Carlisle*[26]).

In my opinion, section 6 of the Act and section 179 of the Companies Act 1965 can co-exist or stand together. They do not appear to be inconsistent or repugnant to each other that effect cannot be given to both at the same time. Besides, such a construction does not seem to lead to any unreasonable or manifestly absurd result. In my opinion, section 6 merely modifies the operation of section 179(2) by prescribing that proposals of takeover schemes should now be sent to CIC for consideration and approval. Section 6 does not alter or purport to alter the law regulating the statutory requirements of a takeover exercise laid down in section 179. In my opinion, there is no legal justification to insert a superadded condition or limitation to section 6 making prior CIC approval of the takeover schemes to be obtained first before implementing section 170(2). If such were the construction it would have the effect, directly or indirectly, of stultifying takeover bids in Malaysia. There appears to be a desire and need to interpret commercial law and practice uniformly (*Midland Silicones Ltd.* v. *Scruttons Ltd.*[27]) Moreover, it is important to bear in mind that the

appellant were not attempting to do the very thing which they were prohibited expressly from doing so by section 6 of the Act (see Lord Cairns L.C. in *Ashbury Carriage Co.* v. *Riche*[28]). It was not a question of doing indirectly the very thing which they were prohibited by section 6 of the Act from doing directly.

For the above reasons, I am unable to agree with the learned judge that a superadded condition or limitation should be implied into section 6 of the Act. I can find no justification for adopting this view in any of the authorities. Nor, if such binding authority existed, could it be easily justified in the face of the clear wording of the section. In my opinion, the onus of proving that such additional words or phrases ought to be imported into section 6 rests on the respondent and they have failed to discharge it.

I would therefore agree with the construction put to section 6 of the Act by the appellant that CIC approval of the takeover schemes need not be obtained before the provisions of section 179(2) of the Companies Act 1965 can be implemented and that CIC approval may be given after takeover notice has been given to the respondent and/or takeover offer has been forwarded to the shareholders of the respondent. In my opinion, section 6 of the Act cannot be properly extended so as to embrace a situation which Parliament could easily have provided if it had been its intention to do so. It cannot have been the intention of the legislature to superimpose a further condition or limitation into the section which Parliament had omitted by design.

The other ground of appeal argued by learned counsel for the appellant was that the learned judge erred in law in holding that the respondent have a *locus standi* to institute these proceedings against the appellant in a takeover exercise made pursuant to section 179(2) of the Companies Act 1965. In my opinion, since the statutory takeover notice under section 179(2) has to comply with the requirements of Part B of the Tenth Schedule to the Companies Act 1965 and has to be despatched by the appellant to the respondent, the respondent have a sufficient interest to give them the necessary *locus standi* to take legal action to challenge the validity of the takeover notice. However, having regard to the limited construction put to section 6 of the Act by me I express no opinion whether the respondent have the requisite *locus standi* to institute legal proceedings against the appellant regarding (a) the takeover offer which the appellant have to send to the shareholders of the respondent and only notice in writing that offers have been made under the scheme and the date of the offers need be sent to the respondent (see section 179(5) or (b) to apply for an interlocutory injunction in respect of the said matter.

In the result and for the reasons given, I would allow the appeal with costs here and in the Court below and set aside the interlocutory injunction granted by the learned judge.

Appeal dismissed.

Solicitors: *Zain & Co.; Shearn Delamore & Co.*

PUBLIC PROSECUTOR v. OH TECK SOON

[S.C. (Lee Hun Hoe C.J. (Borneo), Seah & Hashim Yeop A. Sani S.C. JJ.) October 28 & December 2, 1985]

[Kuala Lumpur – Supreme Court Criminal Reference No. 3 of 1985]

Criminal Law and Procedure – Prosecution for offences under Copyright Act, 1969 – Whether barred if instituted more than six months after seizure of videotapes, the subject matter of charge – Copyright Act, 1969, ss. 15(1), 15(2) & 15(4).

Copyright – Prosecution under Copyright Act – Copyright Act, 1969, s. 15(4).

In this case the Police on July 16, 1981 raided certain premises in Ipoh and seized copies of video tapes under a warrant issued by a Magistrate under section 15(4) of the Copyright Act, 1969. The accused was arrested and charged the same day for offences under the Copyright Act. After a number of postponements the accused was discharged on September 14, 1982, the discharge not amounting to an acquittal. Subsequently the accused was arrested on a warrant of arrest issued by the Magistrate and he was produced before the Magistrate on December 1, 1982. The same two charges were proferred against him. A preliminary objection was raised that the prosecution was out of time. The learned Magistrate was of the view that the second prosecution was a continuation of the first prosecution and as such was not caught by the six-month period under section 15(4) of the Copyright Act. He overruled the preliminary objection. The accused appealed to the High Court. The learned Judge of the High Court held that although the appeal was on a preliminary point it was a question of jurisdiction and therefore the appeal was in order. He held that the second prosecution should not be construed as a continuation of the first one. The proceedings which were instituted within six months of the seizure of the tapes terminated when the accused was discharged. As the second